

CHAPTER A

55TH FEDERAL LABOR RELATIONS COURSE

Introduction to the Law of Federal Employment

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Outline of Instruction

I. INTRODUCTION.

II. REFERENCES.

A. Statutes.

1. Title 5, United States Code, Chapters 11, 12, 21, 23, 33, 51, 55, 75, and 77 (Civil Service Reform Act of 1978, codified as amended at 5 U.S.C. §§ 1101-8913).
2. Title 29, United States Code, §§ 791 and 794a (Rehabilitation Act of 1973).
 - a. Note: In 1992, the Rehabilitation Act (29 U.S.C. § 791(g)) was amended to make standards that apply under Title I of the Americans with Disabilities Act (42 U.S.C. § 12111 *et seq.*) and the provisions of §§ 501, 504, and 510 of the Americans with Disabilities Act (42 U.S.C. §§ 12201-204, 12210) applicable in Rehabilitation Act cases to determine whether non-affirmative action employment discrimination occurred. These provisions primarily relate to discrimination based on disability and reasonable accommodation.
3. Title 29, United States Code, §§ 633a (Age Discrimination in Employment Act).
4. Title 42, United States Code, §§ 2000e to 2000e-17 (Civil Rights Act of 1964, as amended).
5. Title 42, United States Code, §§ 1981, 1988, and 2000e-2 (Civil Rights Act of 1991).
6. Title 5, United States Code, §§ 2302, 1211-1219 (Whistleblower Protection Act of 1989, as amended).

B. Government-Wide Regulations and Guidance.

1. Office of Personnel Management (OPM). Title 5, Code of Federal Regulations, Chapter I.
2. Merit Systems Protection Board (MSPB). Title 5, Code of Federal Regulations, Chapter II.
3. Office of Special Counsel (OSC). Title 5, Code of Federal Regulations, Chapter VIII.
4. Equal Employment Opportunity Commission (EEOC). Title 29, Code of Federal Regulations, Chapter XIV (Part 1614 applies to federal sector equal employment opportunity complaints processing).

C. Military Department Regulations.

1. Department of Defense.
 - a. DoD Directive 1400.25-M, DOD Civilian Personnel Manual System (DODCPMS). This Directive updates policy and assigns responsibilities for civilian personnel management of the DoD civilian workforce.
<http://www.cpms.osd.mil/cpm/docs/directive.pdf>
 - b. DoD Civilian Personnel Manual.
<http://www.cpms.osd.mil/cpm/cpm.html>
2. Department of the Army. Army Regulation 690-xxx series.
<http://www.usapa.army.mil/cpol/>
3. Department of the Navy. Office of Civilian Personnel Management Instruction (OCPMINST) 12xxx.x series. According to the Navy's Human Resources website (Sep 01), most Navy Human Resources guidance is under revision. For current guidance, see
<http://www.hq.navy.mil/shhro/>
4. Department of the Air Force. Air Force Instruction 36-xxx series. See Air Force Civilian Personnel Management Support System (PERMISS).
<http://www.afpc.randolph.af.mil/>

5. Marine Corps. Marine Corps Orders (MCO) 12xxx.x series.
<http://www.usmc.mil/directiv.nsf/cp?OpenView&Count=3000>.

D. Secondary Sources.

1. Administrative and Civil Law Deskbook, The Law of Federal Employment, JA 210 (September 2000).
2. U.S. Merit Systems Protection Board Reporter (M.S.P.R.), West Publishing Co., St. Paul, MN. MSPB decisions (from 1994 to present) are also available at the MSPB website:
<http://www.mspb.gov/decisions/decisions.html>
3. Representing the Agency Before the U.S. Merit Systems Protection Board: A Handbook on MSPB Practice and Procedure Harold J. Ashner, Dewey Publications, Inc., P.O. Box 663, Arlington, VA 22216 Tel.: (703) 524-1355. Email: dewey@deweypub.com. Web: www.deweypub.com.
4. A Guide to Merit Systems Protection Board Law & Practice, Peter B. Broida, Dewey Publications Inc., P.O. Box 663, Arlington, VA 22216; Tel.: (703) 524-1355. Updated annually.
5. Representing Agencies and Complainants Before the EEOC, Hadley, Laws, and Riley, Dewey Publications, Inc., P.O. Box 663, Arlington, VA 22216; Tel.: (703) 524-1355. [Book's focus is hearing practice].
6. A Guide to Federal Sector Equal Employment Law & Practice, Ernest C. Hadley, Dewey Publications Inc., P.O. Box 663, Arlington, VA 22216; Tel.: (703) 524-1355. Updated annually. [Book's focus is substantive law].
7. Internet Cites:
 - a. OPM: www.opm.gov
 - b. MSPB: www.mspb.gov
 - c. EEOC: www.eeoc.gov

- d. DoD Civilian Personnel Management Service:
<http://www.cpms.osd.mil>
- e. DoD Directives/Instructions: <http://www.dtic.mil/whs/directives/>
- f. Army Civilian Personnel Office: www.cpol.army.mil
- g. USMC Human Resources Office:
<http://www.quantico.usmc.mil/activ/chro/hrh/index.htm>
- h. Navy Human Resources Office: <http://www.hq.navy.mil/shhro/>
- i. Air Force Personnel Center: <http://www.afpc.randolph.af.mil/>
- j. List of personnel management related links:
http://www.cpms.osd.mil/vip/p_links.htm

III. DEVELOPMENT AND STRUCTURE OF THE FEDERAL CIVIL SERVICE SYSTEM.

A. Evolution From Spoils System.

- 1. Pendleton Act, 22 Stat. 403 (1883).
- 2. Lloyd-LaFollette Act, 37 Stat. 555 (1912).
- 3. Veterans' Preference Act, 58 Stat. 387 (1944).
- 4. Civil Service Reform Act of 1978, Pub. L. No. 95-454 (1978).
- 5. Whistleblower Protection Act of 1989, 5 U.S.C. §§ 1211 (establishing Office of Special Counsel as independent agency).

6. Civil Service Due Process Amendments of 1990, Pub. L. No. 101-376 (1990). Amends 5 U.S.C. § 7511 to extend procedural protections to certain excepted service employees who have completed 2 years of continuous service. Includes the right to appeal adverse personnel actions to the MSPB.

B. Key Players in the Civil Service System (Government-Wide).

1. The President and Congress. U.S. Const. art. II, § 2, cl. 2: The President . . . shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein provided for and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.
2. Office of Personnel Management (OPM). 5 U.S.C. §§ 1101-1105.
 - a. Source: A successor agency to the Civil Service Commission created under the authority of the Civil Service Reform Act of 1978.
 - b. Function: The principal function of the OPM is to set policy and provide guidance to other federal agencies in matters regarding federal employees.
3. Merit Systems Protection Board (MSPB). 5 U.S.C. §§ 1201-1206.
 - a. Source: Three-member bipartisan board created under the authority of the Civil Service Reform Act of 1978.
 - b. Functions:
 - (1) Hear and adjudicate cases within its jurisdiction.
 - (2) Conduct special studies.
 - (3) Review OPM rules and regulations to determine validity.

4. Office of Special Counsel (OSC). 5 U.S.C. §§ 1211-1219.
 - a. Sources: The Civil Service Reform Act of 1978; Whistleblower Protection Act of 1989; Hatch Act.
 - b. Functions: OSC receives, investigates, and prosecutes allegations of prohibited personnel practices (PPPs), with emphasis on protecting federal government whistleblowers.
 - (1) OSC seeks corrective action remedies (such as back pay and reinstatement), by negotiation or from the Merit Systems Protection Board (MSPB), for injuries suffered by whistleblowers and other complainants. OSC is also authorized to file complaints at the MSPB to seek disciplinary action against individuals who commit PPPs.
 - (2) OSC promotes compliance by government employees with legal restrictions on political activity by providing advisory opinions on, and enforcing, the Hatch Act. The Hatch Act Unit also enforces compliance with the Act. Depending on the severity of the violation, OSC will either issue a warning letter to the employee, or prosecute a violation before the MSPB.
5. Equal Employment Opportunity Commission (EEOC).
 - a. Source: The EEOC was established by Title VII of the Civil Rights Act of 1964; however, the Act did not originally apply to the federal sector. The Equal Employment Opportunity Act of 1972 made Title VII applicable to the federal workplace. Responsibility for federal sector EEO was vested in the Civil Service Commission. Presidential Reorganization Plan No. 1 of 1978, 43 Fed. Reg. 19,807 (1978) transferred enforcement power for federal sector EEO complaints from the Civil Service Commission to the EEOC.
 - b. Functions: The EEOC coordinates all federal equal employment opportunity regulations, practices, and policies. It interprets employment discrimination laws, monitors the federal sector employment discrimination program, and sponsors outreach and technical assistance programs.

6. Federal Labor Relations Authority (FLRA).

- a. Source: The FLRA was created by the Civil Service Reform Act of 1978 (5 U.S.C. §§ 7104-7105) and is a quasi-judicial body with three full-time members who are appointed for five-year terms by the President.
- b. Functions: The FLRA establishes policies and guidance relating to federal sector labor-management relations and resolves disputes and ensures compliance with Title VII of the Civil Service Reform Act of 1978, known as the Federal Service Labor-Management Relations Statute. It adjudicates disputes arising under the Statute, deciding cases concerning the negotiability of collective bargaining agreement proposals, appeals concerning unfair labor practices and representation petitions, and exceptions to grievance arbitration awards.

C. Agency Players in the Civil Service System.

- 1. Department of Defense Civilian Personnel Management Service (CPMS).
Mission: Develops and manages human resources programs and systems for the Department of Defense (DoD); develops and recommends policy and provides guidance on all aspects of civilian personnel management; and advises all levels of management employees in DoD regarding human resources issues.
- 2. Installation Level Players.
 - a. Labor Counselor.
 - b. The Civilian Personnel Office (CPO).
 - (1) Traditional structure.
 - (2) DoD worldwide regionalization of CPOs.

- (i) Army: Civilian Personnel Operations Center Management Agency (CPOCMA). <http://www.cpocma.army.mil/> . Seven CONUS Civilian Personnel Operations Centers (CPOCs), but downsizing to five. Three overseas CPOCs (Alaska, Korea, Germany).
- (ii) Air Force: One Regional Service Center, Randolph AFB, TX.
- (iii) Navy: Eight Regional Service Centers.
- (iv) Defense Finance & Accounting Service (DFAS). Indianapolis, IN.
- (v) Defense Logistics Agency (DLA). Columbus, OH.
- (vi) Washington Headquarters Service (DoD NCR). Alexandria, VA.

(3) Civilian Personnel Advisory Centers (CPACs).

c. Equal Employment Opportunity Officer.

IV. CLASSIFICATIONS OF FEDERAL EMPLOYEES.

- A. Becoming a Civil Service Employee--Statutory Requirements: Appointment in the civil service by one of several designated officials; performance of a Federal function; and supervision in the performance of duties by a federal official. 5 U.S.C. § 2105(a).

1. Appointment. Most heavily litigated of the 3 prongs, frequently in the area of eligibility for civil service retirement benefits. *See Wolcott v. U.S.*, 43 Fed. Cl. 581 (1999)(Employees of federal employer not entitled to severance pay because they were specifically appointed as trust fund employees and not as civil service employees); *Bevans v. Office of Personnel Management*, 900 F.2d 1558 (Fed. Cir. 1990)(Petitioner's deceased husband's survivorship benefits did not include the time he spent as an employee of a proprietary corporation of the CIA); *Horner v. Acosta*, 803 F.2d 687 (Fed. Cir. 1986); *Watts v. OPM*, 814 F.2d 1576 (Fed. Cir. 1987).
2. Performing federal function. *McCarley v. MSPB*, 757 F.2d 278 (Fed. Cir. 1985), *overruled on other grounds by Hagmeyer v. Department of Treasury*, 852 F.2d 531 (Fed. Cir. 1988)(MSPB properly dismissed McCarley's appeal because although appointed, McCarley had not yet started work and therefore had not performed a federal function nor been supervised).
3. Supervision. *Horstmann v. OPM*, No. 98-3187, 1998 U.S. App. LEXIS 26223 (Fed. Cir. Oct. 14, 1998)(Court declined to award federal employee status to NASA contract employee who alleged he was closely supervised by NASA civil servants).
4. Nonappropriated fund (NAF) employees are not deemed employees for the purpose of laws administered by the OPM, with exceptions. *See* 5 U.S.C. § 2105(c)(1).

B. Employees--Classified by Type of Service to Which Appointed

1. Competitive service. 5 U.S.C. § 2102. More than 80% of Federal employees are employed in the competitive service. Testable-type skills. Applicants compete for the job and are evaluated according to objective standards. Their "examination" may be in form of an evaluation of experience provided on an application, a written test, a review of work samples, or all of the above.
2. Excepted service. 5 U.S.C. § 2103. Over 19% of Federal employees are excepted service.

- a. Statutory definition: "[T]hose civil service positions which are not in the competitive service or the Senior Executive Service." This type of appointment is made for positions excepted from the competitive service system by law, executive order, or with OPM approval.
- b. Excepted Service Schedules.
 - (1) Schedule A: Positions for which it is not practicable to apply qualification standards and requirements used in the competitive service system and which are not of a confidential or policy determining nature. Ex: lawyers, chaplains, faculty members at service academies.
 - (2) Schedule B: Positions for which it is not practicable to hold competitive examinations and which are not of a confidential or policy determining nature. Appointees must meet OPM's basic qualification standards for the job. Ex: Dep't of Agriculture research associates, trainees in cooperative education programs.
 - (3) Schedule C: Key positions which are policy determining or which involve close personal relationship between incumbent and agency head or key officials. No examinations. Most political appointees below subcabinet level are appointed under Schedule C.
- 3. Senior Executive Service (SES). 5 U.S.C. §§ 2101a and 3132(a)(2). Less than one half of one percent of employees are SES. Established by the Civil Service Reform Act of 1978 as a separate personnel system for employees who administer at the top levels of Federal government. Managerial, supervisory, and policy positions classifiable above GS-15. SES appointments can be career, noncareer, limited term, or limited emergency. Veterans' preference does not apply.

- a. Career. Initial career appointments to the Senior Executive Service must be based on merit competition. Agency Executive Resources Boards conduct the merit staffing process leading to initial career appointment. Vacancies must be advertised Government-wide. OPM administers interagency Qualification Review Boards who certify the executive qualifications of agency selectees before their initial SES career appointment. A one-year probationary period follows initial career appointment. At least 70% of SES positions Government-wide must be filled by individuals with 5 years or more of current, continuous service immediately before initial SES appointment to assure experience and continuity. Serve one-year probationary period.
- b. Non-career and limited appointments are made without competition. The agency head or his/her designee approves the candidate's qualifications. Law limits number of noncareer SESs to 10% of total SES positions.
- c. Pay. No grades, but six pay levels. Agency sets pay at one of authorized levels. Pay may be reduced only for performance or disciplinary reasons. Career SESs get 15-days advance notice of pay reduction.

C. Employees--Classified by Tenure Status.

- 1. Requirement for probationary period. 5 U.S.C. §§ 3321; 5 C.F.R. §§ 315.801-315.806.
 - a. Purpose--an extension of the hiring process; to determine the employee's fitness and qualifications for continued employment. 5 C.F.R. § 315.803. U.S. Dep't. of Justice v. FLRA, 709 F.2d 724 (D.C. Cir. 1983).
 - b. Competitive service--one year probationary period. 5 C.F.R. § 315.802.
 - (1) When probationary period required. 5 CFR § 315.801.
 - (a) When employee is given a career or career-conditional appointment and

- (i) Was appointed from competitive list of eligibles;
 - (ii) Was reinstated, unless employee completed probationary period or served with competitive status under an appointment which did not require probationary period; or
 - (iii) Was transferred, promoted, demoted, or reassigned before completing the probationary period.
- (b) Employees reinstated from Reemployment Priority List to position in same agency and same commuting area do not have to serve new probationary period, unless probationary period was not completed in last job. 5 CFR § 315.801.
- (c) Prior federal civil service (including nonappropriated fund service) *may* count toward completion of probation (see factors at 5 CFR § 315.802(b)).
- (d) Requirement of new probationary period upon change in positions if new appointment or initial probationary period not satisfied. 5 C.F.R. § 315.801(b); Park v. DHHS 78 M.S.P.R. 527 (1998); Todd v. MSPB, 50 F.3d 21 (Fed. Cir. 1995) (Table); Grigsby v. Dep't of Commerce, 729 F.2d 772 (Fed. Cir. 1984); Francis v. Dep't of Navy, 53 M.S.P.R. 545 (1992).
- (e) Temporary or intermittent appointments do not count toward satisfaction of probationary period. Forest v. MSPB, 47 F.3d 409 (Fed. Cir. 1995); Rosete v. OPM, 48 F.3d 514 (Fed. Cir. 1995).

c. Excepted service.

- (1) Preference eligible excepted service employees must serve a one-year probationary equivalent time period. 5 USC § 7511.
 - (2) Nonpreference eligible excepted service employees must serve two years of "current continuous service . . . under other than a temporary appointment . . ." *Forest v. Merit Systems Protection Bd.*, 47 F.3d 409 (Fed. Cir. 1995).
- d. Senior Executive Service. Career SESs serve probationary period of one year. 5 CFR § 317.503.
- e. Probationary period for new supervisors--one year. 5 U.S.C. § 3321; 5 C.F.R. §§ 315.901-315.908; AR 690-300, ch. 315, subch. 9. *DeCleene v. Education*, 71 M.S.P.R. 651 (1996).
 - (1) Employees assigned or promoted to supervisory positions who do not satisfactorily complete probationary period shall be returned to a position of no lower grade and pay than the last position. 5 USC § 3221(b).
2. Significance of probationary status. Probationary employees who do not meet acceptable standards may be removed from civil service without the formal procedures (due process) that apply to non-probationers. 5 C.F.R. § 315.804 (requiring only notice of effective date and stated reason for termination of probationer); *Toyens v. Dep't of Justice*, 58 M.S.P.R. 634 (1993); *Stanley v. Dep't of Justice*, 58 M.S.P.R. 354 (1993); *Pierce v. GPO*, 70 F.3d 106 (1996).
 - a. Pre-employment conditions. If terminating probationary employee for conditions arising before appointment, employee is entitled to (1) advance written notice of reasons for the action; (2) reasonable time to file written answer; and (3) written notice of decision, reason for the decision, and right to appeal to MSPB. 5 CFR § 315.805.

3. Probationary employees' limited MSPB appeal rights. When separated, a competitive service probationary employee has limited appeal rights to the MSPB. 5 C.F.R. § 315.804-06. The employee has the right to a jurisdictional hearing to determine whether the termination was based upon partisan political reasons or marital status or that his termination was based upon pre-appointment reasons and was procedurally incorrect. *Park v. DHHS* 78 M.S.P.R. 527 (1998); *Rhone v. Dept Treasury*, 66 M.S.P.R. 257 (1995).
 - a. No entitlement to have the MSPB review the correctness of the agency decision. *Gaxiola v. Dep't. Of Air Force*, 6 M.S.P.R. 515 (1981); *Munson v. Dep't. of Justice*, 55 M.S.P.R. 246 (1992); *Keller v. Dept of Navy*, 69 M.S.P.R. 183 (1996).
4. Negotiated grievance procedure concerning separation of probationary employee is precluded by 5 USC § 3221. *Dep't. of Justice, Immigration and Naturalization Serv. v. FLRA*, 709 F.2d 724 (D.C. Cir. 1983); *Nellis Air Force Base & AFGE Local 1199*, 46 FLRA 1323 (1993).
5. Employee tenure upon appointment: Career-conditional. 5 C.F.R. § 315.301.
 - a. Acquisition of career status. After serving three continuous years under a career-conditional appointment, the employee will automatically receive a career appointment.
 - (1) If employee leaves federal service before acquiring career status (and not return in 30 days), a new three-year period must be completed.
 - (2) Employees with veterans' preference retain lifetime reinstatement eligibility.
 - b. Significance of career status: Noncompetitive promotion and placement. A career appointment confers permanent status with greatest possible job protection. Career employees have permanent reinstatement eligibility (if leave federal service, they may be considered for reemployment without having to take another competitive civil service examination). 5 C.F.R. § 212.301.

6. Due Process in Performance-Based or Misconduct-Based Adverse Actions.
 - a. Much due process:
 - (1) Nonprobationary competitive service employees.
 - (2) Nonprobationary preference eligible excepted service employees.
 - (3) Most nonprobationary nonpreference eligible excepted service employees with more than two years of current continuous service.
 - b. Little due process:
 - (1) Probationary competitive service and probationary, preference eligible excepted service employees.
 - (2) Nonpreference eligible excepted service employees with less than two years of current continuous service.
 - (3) Temporary or term appointees; some excepted service employees not subject to Due Process Amendments of 1990. *Todd v. MSPB*, 55 F.3d 1574 (Fed. Cir. 1995) (Employees of DODDS schools do not receive appeal rights); *Monser v. Dep't of Army*, 67 M.S.P.R. 477 (1995) (Civilian Intelligence Personnel Management System [CIPMS] employees do not receive appeal rights).
- (a) Note: The Civil Service Due Process Amendments of 1990, Pub. L. No. 101-376 (1990), amended 5 U.S.C. § 7511 to extend procedural protections to certain excepted service employees who have completed 2 years of continuous service. Includes the right to appeal adverse personnel actions to the MSPB.

- c. Senior Executive Service. See 5 CRF § 317.302. If career SES is removed during probationary period, there are no MSPB appeal rights. 5 CFR § 359.407; 5 USC § 7701. Nonprobationary career SES may have fallback rights to a GS-15 position unless removal is for misconduct.

D. Employees--Classified by Eligibility for Veterans' Preference. 5 U.S.C. § 2108.

1. General Principles.

- a. Goal is not to place a veteran in every vacant federal job (would be incompatible with merit principles).
- b. Veterans' preference does not apply to promotions.
- c. Preference applies in hiring from civil service examinations, for most excepted service jobs, and for temporary appointments.

2. General Requirements.

- a. Honorable or general discharge is always necessary.
- b. Military retirees at rank of major (lieutenant commander) or higher are not eligible for preference unless they are disabled veterans.
- c. National Guard and Reserve action for training purposes does not qualify for veterans' preference.

3. Which veterans get preference?

- a. General rule: Individuals who enter military service after October 14, 1976, will not receive veterans' preference unless they receive a campaign expeditionary medal, or serve in a war declared by Congress, or become disabled during or as a result of military service.

- b. Service on active duty in the armed forces “during, or at the time of, a campaign or expedition for which a campaign badge has been authorized” is not sufficient. Rather, the individual must have served in the campaign or expedition for which a campaign badge was authorized. *Perez v. MSPB*, 85 F.3d 591 (Fed. Cir. 1996); *Rivas v. Postal Serv.* 72 M.S.P.R. 383 (1996).
 - c. Those who served during the period from April 28, 1952, through July 1, 1955 receive preference.
 - d. Those who served for a period of more than 180 consecutive days after January 31, 1955 and before October 15, 1976 receive preference.
 - e. The Fiscal Year 1998 Defense Authorization Act authorizes servicemembers who participated in Operation Joint Endeavor or Operation Joint Guard in the Republic of Bosnia and Herzegovina and in such other areas in the region as the Secretary of Defense considers appropriate and who were awarded the Armed Forces Expeditionary Medal (AFEM) to claim a 5 point veterans’ preference (in hiring).
 - f. Two-year minimum active duty service condition for medal holders entering military service after September 7, 1980. (including Lebanon, Grenada, Panama, Southeast Asia, Somalia, Haiti, and the Gulf War). Does not apply for disabled veterans. Reserve and Guard members need not have served two years provided they served the full period when called or ordered to active duty.
- 4. Types of preference eligibility.
 - a. Veterans.
 - b. Disabled veterans.
 - c. Certain unmarried widows/widowers.
 - d. Wives and mothers of disabled veterans.

5. Effects of preference eligibility.
 - a. 30-Percent Disabled Veterans. Under the Civil Service Reform Act of 1978, a disabled veteran with compensable service-connected disability of 30% or more who meets the qualification standards may be given a noncompetitive appointment (which may lead to conversion to career or career-conditional employment).
 - (1) Agencies wanting to disqualify or non-select an eligible applicant with 30% veterans' preference on a civil service list of eligibles must first notify OPM and the applicant. Applicant may appeal within 15 days.
 - b. Preference in Hiring.
 - (1) 5-point preference. In civil service examinations, 5 points are added to the earned rating of an applicant who makes a passing grade and who was honorably separated from the military.
 - (2) 10-point preference. Ten points are added to the earned rating of a disabled veteran civil service applicant who makes a passing grade and was honorably separated.
 - (a) Disabled means a veteran with (1) present service-connected disability; or (2) is receiving compensation, disability retirement benefits, or pension from the military or the VA, or who was awarded the Purple Heart.
 - c. Veterans with career tenure. Veterans with career civil service tenure have job retention rights over all other federal workers in the same competitive level. Veterans with career-conditional tenure do not have job retention rights over non-veterans with career tenure.
 - d. Reduction-in-force (RIF) actions. 5 U.S.C. § 3502.

- e. Actions for unacceptable performance and misconduct. 5 U.S.C. §§ 4303(e), 7511(a)(1)(B), and 7513(d). Veterans in the excepted service who have completed one year of current continuous service are entitled to MSPB appeal of adverse actions. (Non-veterans must serve two years before gaining same MSPB appeal rights).
 - 6. Constitutionality of preference. *Frederick v. United States*, 507 F.2d 1264 (Ct. Cl. 1974). *See also* *Massachusetts v. Feeney*, 442 U.S. 256 (1979).
- E. Classification of Positions by Method of Payment. 5 U.S.C. Chapters 51-59.
- 1. General schedule employees. 5 U.S.C. Chapters 51 and 53. GS-1 through GS-15. Salaries based on substantially equal pay for substantially equal work within each local pay area. Differences in pay based on differences in work and performance and comparability to the salaries that non-Federal employers pay for work at the same level of difficulty and responsibility.
 - 2. Prevailing rate employees (wage system). 5 U.S.C. §§ 5341-5349. Worker: WG-1 through WG-15. Leader: WL-1 through WL-15. There are 5 steps in each WG and WL grade. Supervisor = WS. Pay system covers trade, craft, labor, and other blue-collar jobs. Pay is based on the prevailing rates in a given local wage area. These are hourly rate employees who receive annual wage adjustments.
 - 3. Senior Executive Service (SES) employees. 5 U.S.C. §§ 5381-5385. ES-1 through ES-6. President sets pay rate. Minimum may not be below 120% of lowest rate for GS-15.
 - 4. Executive Schedule. Levels I-V. Top executive salaries. Members of Cabinet, deputy secretaries, undersecretaries, assistant secretaries, etc.
 - 5. Nonappropriated fund employees. Those employees who are not paid from funds appropriated by Congress. Work in exchanges, clubs, commissaries, etc. Paid from funds derived from sales and services performed. AR 215-3.

V. CONCLUSION.

